# In the Supreme Court of the United States

OCTOBER TERM, 1972

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No. 72-15

ANDREW JOSEPH SCHAACK, PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

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## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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### STATEMENT

Petitioner seeks review of his conviction for refusing to submit to induction into the armed forces.[1] The facts are not in dispute.

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[1] The judgment of the court of appeals affirming the conviction was entered on May 31, 1972. The petition was filed on July 1, 1972, and thus is out of time under Rule 22(2) of the Rules of this Court.

Petitioner satisfied his military obligation in his native Luxembourg by nine months of army service before he emigrated to the United States. Upon arrival here, he registered as required by the Selective Service Act, requesting classification as exempt from military service due to his prior service in his native country. This was denied since his service was not long enough to qualify for exemption under the applicable statute (50 U.S.C. App. 456(a)), which requires 18 months of active service in an allied army. Petitioner was ordered to report for induction on March 28, 1968. He reported, but refused to submit to induction. His conviction by the district court (Pet. App. 7a-10a) was affirmed by the court of appeals (Pet. App. 1a-5a). Even apart from the untimeliness of the petition, the asserted constitutional question raised does not merit review.

Petitioner's sole claim is that the requirement in Section 456(a) of a minimum of 18 months service in the armed services of a United States ally is so arbitrary and capricious as to violate due process of law. Both courts below held that the proper legislative determination of a reasonable cut-off point is adequately related to a proper government objective, and does not constitute an arbitrary deprivation of liberty. See *Smith* v. *United States*, 424 F. 2d 267 (C.A. 9). They further noted that the necessary balancing of the various national defense and diplomatic interests required in determining the value to be given various periods of foreign military service "clearly called for legislative expertise" (Pet. App. 3a, 9a).

It is for Congress to assess the lengths of service required by allied military forces and to consider the nature of foreign military training in deciding how much foreign service suffices to justify an exemption from the two-year obligation for service in the United States armed forces. An eighteen month cut-off is well within the range of reasonableness.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
*Solicitor General.*

AUGUST 1972.

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